

RESOLUTION NO. 80-61

RESOLUTION APPROVING NORTHERN
CALIFORNIA POWER AGENCY ELECTRIC
SUPPLY PROJECT CAPACITY AGREEMENT -
SHELL PROJECT

BE IT RESOLVED BY the City Council of the City of
Lodi as follows:

SECTION 1. The attached Electric Supply Project
Capacity Agreement - Shell Project is hereby approved by the
City Council of the City of Lodi.

SECTION 2. The City Council of the City of Lodi does
hereby authorize the Mayor and City Clerk to execute said Agree-
ment on behalf of the City of Lodi.

Dated: April 23, 1980

I hereby certify that Resolution No. 80-61 was
passed and adopted by the City Council of Lodi
in an adjourned regular meeting held April 23,
1980 by the folloiwng vote:

Ayes:	Councilmen - Hughes, Katnich, McCarty Pinkerton and Katzakian
Noes:	Councilmen - None
Absent:	Councilman - None


ALICE M. REIMCHE
CITY CLERK

ELECTRIC SUPPLY PROJECT CAPACITY AGREEMENT
SHELL PROJECT

This Electric Supply Project Capacity Agreement (the "Agreement") by and among NORTHERN CALIFORNIA POWER AGENCY, a joint powers agency of the State of California existing pursuant to the provisions of Division 7 of the Government Code of the State of California, hereinafter referred to as "NCPA" and the following governmental agencies:

1. The City of Alameda;
2. The City of Biggs;
3. The City of Gridley;
4. The City of Healdsburg;
5. The City of Lodi;
6. The City of Lompoc;
7. The City of Roseville;
8. The City of Santa Clara;
9. The City of Ukiah; and among the Plumas-Sierra Rural Electric Cooperative.

The parties to this Agreement, other than NCPA, are hereinafter individually referred to as "Participant," and collectively referred to as "Participants."

The effective date of this Agreement will be the day that NCPA executes the Agreement.

WITNESSETH:

WHEREAS, there is a need for electric power capability from economical and environmentally sound sources for present and future needs in the areas served by each Participant; and

WHEREAS, the Participants to this Agreement and NCPA entered into an agreement entitled "Member Agreement for Construction, Operation and Financing of NCPA Geothermal Generating Unit #2 Project" (the "Shell Member Agreement") and

WHEREAS, to secure the financing of the Project provided for in the Shell Member Agreement ("Shell Project"), the Participants desire that the Shell Member Agreement be amended so that NCPA will receive unencumbered legal title to the Shell Project facilities at the end of the financing as required by the regulations of the Internal Revenue Service; and

WHEREAS, the Participants also desire to secure the availability of electric power after the repayment of the bonds or notes or other evidences of indebtedness issued to finance the Shell Project (the "Bonds"); and

NOW, THEREFORE, in consideration of the Participants and NCPA amending the Shell Member Agreement and the performance of the promises, covenants and conditions hereinafter set forth, at the time and in the manner specified, the parties hereto do agree as follows:

SECTION 1. CAPACITY PROVISIONS

A. DEFINITION OF PROJECT CAPABILITY.

For purposes of this Agreement, "Project Capability" to be generated by the Shell Project is defined as the amount of power and energy that the Shell Project was proven to be capable of at the last power and energy capability test.

B. NCPA TO PROVIDE CAPABILITY.

The duration of this Agreement shall be for the useful productive life of the Shell Project. NCPA's obligation to supply Project Capability pursuant to this Agreement will commence upon (i) the repayment of the Bonds, or (ii) provision for their prepayment and such Bonds shall not be deemed outstanding, whichever shall occur first. This event is hereinafter referred to as "Commencement."

Upon Commencement NCPA shall provide each Participant with Project Capability at the approximate points of delivery at which the Member receives power and energy from the Shell Project prior to Commencement or at such other points of delivery as may be mutually agreed upon. Each Participant shall, during the remaining productive life of the Shell Project, be entitled to receive a share of Project Capability from NCPA in the same amounts and at the same cost as it would have received if the Shell Member Agreement had remained in effect; but such entitlement shall not constitute an encumbrance on the Shell Project, and NCPA shall supply such entitlement from any available source. The share of such Participant as defined in this

paragraph shall be referred to as "Participant Project Capability".

C. USE OF PROJECT CAPABILITY

Each Participant shall have the exclusive right to the use of its Participant Project Capability, provided it is not in default. It is understood that the rights acquired by the Participants pursuant to this Agreement from NCPA relate only to Project Capability, and not to actual amounts of power. NCPA shall not be required to provide Participant Project Capability if the Shell Project is not operated because of technical or economic reasons as agreed to by the Participants.

D. ASSIGNMENT OF PROJECT CAPABILITY.

This subsection places no restraint upon any transfer, assignment, sale or exchange of Participant Project Capability or rights thereto by any Participant when such transfer, assignment, sale or exchange is for the direct or indirect use of the customers of its electric distribution system. With regard to such transfers, assignments, sales

or exchanges the Participant has unfettered rights so far as this Agreement is concerned.

As used in this section, the transfer, assignment, exchange or sale of Participant Project Capability includes the transfer, assignment, exchange or sale of rights thereto.

(a) As to any other disposition of Participant Project Capability, any Participant may transfer, assign, sell or exchange power to which it is entitled under this Agreement to others only as provided for in this subsection.

(b) Such Participant Project Capability shall be offered first to those other Participants in the Shell Project which desire to acquire such capability for the use of the customers of their electric distribution systems solely. Each such Participant shall be limited in its right to such Participant Project Capability as against any other Participant to its Purchasing Participation Percentage thereof as defined in the Shell Member Agreement.

(c) Any such Project Capability not accepted by other Participants shall be offered secondly to such members of the Development Fund which are not Purchasing Participating Members, which shall be limited in their rights as against each other to the proportion which their Participation Percentage is to the total of the Participation Percentage of all such members.

(d) Such Project Capability may then be offered to any person or entity.

(e) Any such transfer, assignment, sale or exchange of Participant Project Capability provided for herein shall be in accordance with terms and conditions set forth by the NCPA Member Agreement For Participation In Electric Development Fund and subject to the principles of economic dispatch.

(f) The Participant receiving Project Capability under paragraph (b) or (c) above shall pay the transferring Participant for such Project Capability an amount not more than the cost of such power to such transferring participant plus all other costs of such Participant related to such transferred Project Capability.

(g) To the extent not prohibited by existing contracts no Participant shall purchase capability from any other source exclusive of its own generating projects if Project Capability is available under this subsection at lower cost, and any other Participant receiving capability by transfer, assignment, sale or exchange hereunder shall agree to the same restriction as a condition of such receipt.

(h) Upon request NCPA will arrange such transaction under this section as is desired by a Participant.

(i) No Participant shall transfer ownership of substantially all of its electric distribution system to another entity until it has first complied with the provisions of this sub-subsection. A consolidation with another governmental entity or change in governmental form is not deemed a transfer of ownership.

(l) Before the date of such transfer, the rights of the transferring Participant under this Agreement shall have been disposed of by

{ transfer, assignment, sale or exchange pursuant to provisions of paragraphs (a), (b), (c) and (e) of this subsection, and subject to the limitations of paragraph (d), effective as of the date of the transfer.

{ (2) Such disposition of a Participant's electric distribution system must be under terms and conditions that provide assurances to the holders of any outstanding indebtedness of NCPA secured by the electric department revenues of the Participant which is transferring ownership of its electric distribution system, so that NCPA's obligations under resolutions issuing bonds or under other agreements made or to be made by NCPA to carry out its obligations, may be promptly and adequately met. NCPA may require that sufficient moneys to discharge such obligations be irrevocably set aside and maintained in a trust account, as a condition to the transfer of the electric distribution system, if no other adequate assurance is available.

(j) No transfers, assignments, sales or exchanges shall diminish any Participant Project Capability without its consent, except in the case of a Participant which sells its distribution system, and then only as provided in paragraph (i), and except as provided in Section 5 herein.

E. LIMITATION ON SALE OR TRANSFER.

NCPA may not assign, sell or transfer any of the electrical facilities or property of any kind whatsoever owned or controlled by NCPA, including the Shell Project, to the extent such action would prevent NCPA from providing the Project Capability under this Agreement to the Participants.

F. COSTS OF DECOMMISSIONING.

If the Federal Government or other owner of the interests in the land or property on which the Shell Project is situated properly demands the decommissioning of the Shell Project in whole or in part, which demand requires the alteration, removal or restoration of the Shell Project

or the underlying land or property, the costs of such decommissioning shall be borne by the Participants in the ratio of their then rights to Project Capability.

SECTION 2. OPERATION AND MAINTENANCE.

A. NCPA TO OPERATE AND MAINTAIN THE SYSTEM.

NCPA shall operate and maintain any NCPA property and facilities (the "System") necessary to provide Project Capability for the Participants pursuant to this Agreement.

B. ANNUAL BUDGET.

NCPA agrees that it will annually prepare and submit to the Participants prior to the beginning of each fiscal year, a proposed budget for the operation and maintenance costs of the System covering the next fiscal year. Such budget will be considered by the Participants, who will make recommendations and suggestions, if needed, to NCPA concerning the proposed budget. The proposed budget will be prepared according to generally accepted accounting practices. NCPA agrees to fully and fairly consider all suggestions from the Participants concerning the proposed budget.

SECTION 3. CAPITAL IMPROVEMENT, CAPITAL REPLACEMENTS AND REPAIRS.

NCPA shall administer and make all capital improvements, capital replacements and repairs to the System for the benefit of the Participants. The Participants shall pay for the costs of such, as provided in the annual budget.

SECTION 4. PROCUREMENT OR GENERATION OF PROJECT CAPABILITY.

It shall be the duty of NCPA to provide Participants Project Capability from the System (including the Shell Project) so long as the provision of the Project Capability does not adversely affect any Participant in any manner. This shall include, but not by way of limitation, all applicable State and Federal requirements.

SECTION 5. REMEDIES.

A. DEFINITION OF DEFAULT BY PARTICIPANT.

If (a) any Participant shall fail to pay any costs of operation, maintenance, capital improvements, capital replacements, or major repairs of the System within

ten (10) days from the date such payment is due and payable, or (b) any Participant shall fail to keep any other terms, covenants or conditions herein for a period of thirty (30) days after written notice thereof from NCPA to the Participant, or (c) any Participant's interest in this Agreement or any part thereof shall be assigned or transferred without the written consent of NCPA, contrary to the provisions of this Agreement, either voluntarily or involuntarily, then in any such events, such Participant shall be deemed to be in default hereunder.

B. NCPA'S RIGHTS ON DEFAULT BY PARTICIPANT.

If a Participant should, after written notice, fail to remedy any default with all reasonable dispatch, not to exceed thirty (30) days, then NCPA shall have the right, at its option, without any further demand or notice, to any one or all of the following remedies:

1. To terminate such Participant's interest in this Agreement and refuse to provide such Participant its Participant Project Capability.

2. NCPA shall have the further option to not terminate the interest in this Agreement and to sell or transfer all or a portion of such Participant Project Capability upon such terms and conditions as NCPA may deem advisable, in which event the money received on such sale or transfer shall be applied first to the expenses of sale or transfer and collection, including any necessary alteration of the System and reasonable attorney's fees, and thereafter toward payment of all sums due by the defaulting Participant, and if a sufficient sum shall not be thus realized to pay such sums and other charges, the defaulting Participant shall pay NCPA any deficiency.

3. To receive from the defaulting Participant a sum of money equal to the interest and charges incurred by NCPA in borrowing money to pay sums due by such Participant and such other costs and damages caused by Participant's default.

4. NCPA shall have the right to levy or assess a surcharge on any Project Capability delivered to the defaulting Participant from any facilities of the System in an amount equal to any amounts due NCPA, inclusive of

interest at the rate established by NCPA at the time of the adoption of the annual budget.

C. SURCHARGE FOR LATE PAYMENT.

NCPA may impose a reasonable surcharge on any late payments from the due date paid.

D. ALL OTHER REMEDIES AT LAW AND IN EQUITY AVAILABLE.

The parties agree that the remedies set forth are not exclusive, and any one or all other remedies provided at law or in equity may, at the option of NCPA, be exercised against a defaulting Participant for breaches not entitling NCPA to a surcharge under the terms of this Agreement.

The parties further agree that with respect to provisions concerning surcharge for delinquent sums due, that damages in addition to the contracted amounts due are of such a nature that they are impracticable or extremely difficult to ascertain, and that such a surcharge is a reasonable estimate of the damages that would be sustained by NCPA, in addition to the contracted amounts due, in the event of such default.

E. ATTORNEYS' FEES AND COSTS TO PREVAILING PARTY.

Should any party commence an action to enforce the provisions of, or actions arising out of, this Agreement, then such party that prevails in that action, proceeding or suit shall be entitled to recover reasonable attorneys' fees, costs, expert witness fees, consultant's fees and testing fees in connection therewith, including such fees for prosecuting, defending any appeal, or incurred in any supplemental proceeding, until judgment is satisfied in full.

SECTION 6.. ARBITRATION IN AND OPERATION AND
MAINTENANCE DISPUTES.

In the event any dispute shall arise among any of the parties hereto with reference to operation and maintenance or promulgation of reasonable rules and regulations for operation, and such disputes cannot be settled by conference among the parties and their engineers and officers within a period of ten (10) consecutive calendar days after such future time as the parties may agree upon, in writing, then such disputes shall be settled by arbitration under

Section 1280 of the Code of Civil Procedure of the State of California.

SECTION 7. TAXATION OF SYSTEM OR INTEREST IN SYSTEM.

In the event that the actions of any Participant cause any facilities of the System to be subject to additional property taxation in whole or in part, the amount of any such additional taxes required to be paid shall be paid by the Participant in addition to any amounts otherwise provided for in this Agreement to be paid for by Participant.

As herein provided, a Participant may assign its interest to a private entity or person. In the event that any such assignment does occur and such is deemed to be a possessory of beneficial interest and becomes subject to taxation, the private entity or person taking such assignment shall be responsible for the payment of all additional taxes.

SECTION 8. RULES AND REGULATIONS.

It is intended by NCPA and the Participants that NCPA may promulgate reasonable rules and regulations for the operation of the System in accordance with prudent utility practice. The foregoing regulations shall not

increase, decrease or change the herein specified obligation of NCPA to obtain and deliver Project Capability to the extent such is available to NCPA. Prior to considering the adoption of any such reasonable rules and regulations, copies thereof shall be delivered to each Participant in writing not less than thirty (30) consecutive calendar days prior to the consideration by NCPA of any such rules and regulations.

SECTION 9. NOTICE.

Any notice or written approval to be given under this Agreement shall be given by personal delivery to NCPA or Participant or by addressing it as set forth below, depositing it in any United States Post Office, registered or certified mail, postage prepaid, and effective on the date of deposit. Notices or written approval shall be addressed as designated in writing and filed with the other parties to the Agreement by NCPA and Participants which designation may be amended from time to time.

SECTION 10. SUCCESSORS AND ASSIGNS.

This Agreement shall inure to the benefit of, and be binding upon, each of the parties and their successors and assigns.

SECTION 11. SECTION HEADINGS, SEVERABILITY.

The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

If any section, subsection, sentence, clause, or phrase of this Agreement, or the application thereof to either party of any other person or circumstance, is for any reason held invalid, it shall be deemed severable, and the validity of the remainder of the Agreement or the application of such provision to the other party or to any person or circumstance shall not be affected thereby.

SECTION 12. EXECUTION OF DUPLICATE ORIGINALS.

This Agreement shall be executed by all parties in duplicate, each of which shall be considered an original

Agreement. The Agreements with each of the other parties shall be the same as this Agreement, and each Agreement may not be altered or changed without the consent of all the remaining parties. This Agreement shall not be binding upon Plumas-Sierra Rural Electric Cooperative until approved in writing by the Administrator of the Rural Electrification Administration.

DATED: _____

APPROVED AS TO FORM:

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DATED: _____

APPROVED AS TO FORM:

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SHELL PROJECT

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(b) Such Participant Project Capability shall be offered first to those other Participants in the Shell Project which desire to acquire such capability for the use of the customers of their electric distribution systems solely. Each such Participant shall be limited in its right to such Participant Project Capability as against any other Participant to its Purchasing Participation Percentage thereof as defined in the Shell Member Agreement.

(c) Any such Project Capability not accepted by other Participants shall be offered secondly to such members of the Development Fund which are not Purchasing Participating Members, which shall be limited in their rights as against each other to the proportion which their Participation Percentage is to the total of the Participation Percentage of all such members.

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(e) Any such transfer, assignment, sale or exchange of Participant Project Capability provided for herein shall be in accordance with terms and conditions set forth by the NCPA Member Agreement For Participation In Electric Development Fund and subject to the principles of economic dispatch.

(f) The Participant receiving Project Capability under paragraph (b) or (c) above shall pay the transferring Participant for such Project Capability an amount not more than the cost of such power to such transferring participant plus all other costs of such Participant related to such transferred Project Capability.

(g) To the extent not prohibited by existing contracts no Participant shall purchase capability from any other source exclusive of its own generating projects if Project Capability is available under this subsection at lower cost, and any other Participant receiving capability by transfer, assignment, sale or exchange hereunder shall agree to the same restriction as a condition of such receipt.

(h) Upon request NCPA will arrange such transaction under this section as is desired by a Participant.

(i) No Participant shall transfer ownership of substantially all of its electric distribution system to another entity until it has first complied with the provisions of this sub-subsection. A consolidation with another governmental entity or change in governmental form is not deemed a transfer of ownership.

(l) Before the date of such transfer, the rights of the transferring Participant under this Agreement shall have been disposed of by

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(2) Such disposition of a Participant's electric distribution system must be under terms and conditions that provide assurances to the holders of any outstanding indebtedness of NCPA secured by the electric department revenues of the Participant which is transferring ownership of its electric distribution system, so that NCPA's obligations under resolutions issuing bonds or under other agreements made or to be made by NCPA to carry out its obligations, may be promptly and adequately met. NCPA may require that sufficient moneys to discharge such obligations be irrevocably set aside and maintained in a trust account, as a condition to the transfer of the electric distribution system, if no other adequate assurance is available.

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F. COSTS OF DECOMMISSIONING.

If the Federal Government or other owner of the interests in the land or property on which the Shell Project is situated properly demands the decommissioning of the Shell Project in whole or in part, which demand requires the alteration, removal or restoration of the Shell Project

or the underlying land or property, the costs of such decommissioning shall be borne by the Participants in the ratio of their then rights to Project Capability.

SECTION 2. OPERATION AND MAINTENANCE.

A. NCPA TO OPERATE AND MAINTAIN THE SYSTEM.

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NCPA shall administer and make all capital improvements, capital replacements and repairs to the System for the benefit of the Participants. The Participants shall pay for the costs of such, as provided in the annual budget.

SECTION 4. PROCUREMENT OR GENERATION OF PROJECT CAPABILITY.

It shall be the duty of NCPA to provide Participants Project Capability from the System (including the Shell Project) so long as the provision of the Project Capability does not adversely affect any Participant in any manner. This shall include, but not by way of limitation, all applicable State and Federal requirements.

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ten (10) days from the date such payment is due and payable, or (b) any Participant shall fail to keep any other terms, covenants or conditions herein for a period of thirty (30) days after written notice thereof from NCPA to the Participant, or (c) any Participant's interest in this Agreement or any part thereof shall be assigned or transferred without the written consent of NCPA, contrary to the provisions of this Agreement, either voluntarily or involuntarily, then in any such events, such Participant shall be deemed to be in default hereunder.

B. NCPA'S RIGHTS ON DEFAULT BY PARTICIPANT.

If a Participant should, after written notice, fail to remedy any default with all reasonable dispatch, not to exceed thirty (30) days, then NCPA shall have the right, at its option, without any further demand or notice, to any one or all of the following remedies:

1. To terminate such Participant's interest in this Agreement and refuse to provide such Participant its Participant Project Capability.

2. NCPA shall have the further option to not terminate the interest in this Agreement and to sell or transfer all or a portion of such Participant Project Capability upon such terms and conditions as NCPA may deem advisable, in which event the money received on such sale or transfer shall be applied first to the expenses of sale or transfer and collection, including any necessary alteration of the System and reasonable attorney's fees, and thereafter toward payment of all sums due by the defaulting Participant, and if a sufficient sum shall not be thus realized to pay such sums and other charges, the defaulting Participant shall pay NCPA any deficiency.

3. To receive from the defaulting Participant a sum of money equal to the interest and charges incurred by NCPA in borrowing money to pay sums due by such Participant and such other costs and damages caused by Participant's default.

4. NCPA shall have the right to levy or assess a surcharge on any Project Capability delivered to the defaulting Participant from any facilities of the System in an amount equal to any amounts due NCPA, inclusive of

the adoption of the annual budget.

C. SURCHARGE FOR LATE PAYMENT.

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D. ALL OTHER REMEDIES AT LAW AND IN EQUITY AVAILABLE.

The parties agree that the remedies set forth are not exclusive, and any one or all other remedies provided at law or in equity may, at the option of NCPA, be exercised against a defaulting Participant for breaches not entitling NCPA to a surcharge under the terms of this Agreement. The parties further agree that with respect to provisions concerning surcharge for delinquent sums due, that damages in addition to the contracted amounts due are of such a nature that they are impracticable or extremely difficult to ascertain, and that such a surcharge is a reasonable estimate of the damages that would be sustained by NCPA, in addition to the contracted amounts due, in the event of such default.

E. ATTORNEYS' FEES AND COSTS TO PREVAILING PARTY.

Should any party commence an action to enforce the provisions of, or actions arising out of, this Agreement, then such party that prevails in that action, proceeding or suit shall be entitled to recover reasonable attorneys' fees, costs, expert witness fees, consultant's fees and testing fees in connection therewith, including such fees for prosecuting, defending any appeal, or incurred in any supplemental proceeding, until judgment is satisfied in full.

SECTION 6. ARBITRATION IN AND OPERATION AND MAINTENANCE DISPUTES.

In the event any dispute shall arise among any of the parties hereto with reference to operation and maintenance or promulgation of reasonable rules and regulations for operation, and such disputes cannot be settled by conference among the parties and their engineers and officers within a period of ten (10) consecutive calendar days after such future time as the parties may agree upon, in writing, then such disputes shall be settled by arbitration under

Section 1280 of the Code of Civil Procedure of the State of California.

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In the event that the actions of any Participant cause any facilities of the System to be subject to additional property taxation in whole or in part, the amount of any such additional taxes required to be paid shall be paid by the Participant in addition to any amounts otherwise provided for in this Agreement to be paid for by Participant. As herein provided, a Participant may assign its interest to a private entity or person. In the event that any such assignment does occur and such is deemed to be a possessory of beneficial interest and becomes subject to taxation, the private entity or person taking such assignment shall be responsible for the payment of all additional taxes.

SECTION 8. RULES AND REGULATIONS.

It is intended by NCPA and the Participants that NCPA may promulgate reasonable rules and regulations for the operation of the System in accordance with prudent utility practice. The foregoing regulations shall not

increase, decrease or change the herein specified obligation of NCPA to obtain and deliver Project Capability to the extent such is available to NCPA. Prior to considering the adoption of any such reasonable rules and regulations, copies thereof shall be delivered to each Participant in writing not less than thirty (30) consecutive calendar days prior to the consideration by NCPA of any such rules and regulations.

SECTION 9. NOTICE.

Any notice or written approval to be given under this Agreement shall be given by personal delivery to NCPA or Participant or by addressing it as set forth below, depositing it in any United States Post Office, registered or certified mail, postage prepaid, and effective on the date of deposit. Notices or written approval shall be addressed as designated in writing and filed with the other parties to the Agreement by NCPA and Participants which designation may be amended from time to time.

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This Agreement shall inure to the benefit of, and be binding upon, each of the parties and their successors and assigns.

SECTION 11. SECTION HEADINGS, SEVERABILITY.

The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

If any section, subsection, sentence, clause or phrase of this Agreement, or the application thereof to either party of any other person or circumstance, is for any reason held invalid, it shall be deemed severable, and the validity of the remainder of the Agreement or the application of such provision to the other party or to any person or circumstance shall not be affected thereby.

SECTION 12. EXECUTION OF DUPLICATE ORIGINALS.

This Agreement shall be executed by all parties in duplicate, each of which shall be considered an original.

Agreement. The Agreements with each of the other parties shall be the same as this Agreement, and each Agreement may not be altered or changed without the consent of all the remaining parties. This Agreement shall not be binding upon Plumas-Sierra Rural Electric Cooperative until approved in writing by the Administrator of the Rural Electrification Administration.

DATED: _____

APPROVED AS TO FORM: